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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT LEE WILLIAMS,

Defendant and Appellant.

E047113

(Super.Ct.No. FSB046991)

OPINION

APPEAL from the Superior Court of San Bernardino County. Brian S.

McCarville, Judge. Affirmed in part; reversed in part and remanded for resentencing.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Robert Lee Williams of three counts of robbery (Pen. Code, § 211; counts 1, 3, 4) and one count of causing serious bodily

injury while fleeing a peace officer (Veh. Code, § 2800.3, subd. (a); count 7). The jury also found defendant to have personally used a firearm (Pen. Code, § 12022.53, subd. (b)) as to counts 1, 3 and 4. The trial court set count 7 as the principal count and imposed an upper term sentence of seven years. For counts 1, 3, and 4, the trial court imposed consecutive one-third midterm sentences of one year each. For each of the three firearm use enhancements, the trial court imposed full 10-year consecutive terms. Defendant contends the trial court erred in imposing full terms for the firearm enhancements. We reverse with instructions to resentence.

DISCUSSION

Defendant contends that the matter must be remanded for resentencing because only one-third of the firearm use enhancement could be imposed on each consecutive term robbery count. The People agree. They are correct.

Penal Code section 1170.1, subdivision (a), provides in part: “The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for which a consecutive term of imprisonment is imposed, and shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses.” Penal Code section 12022.53 enhancements are “specific enhancements” for the purposes of Penal Code section 1170.1’s one-third limitation. (Pen. Code, § 1170.11; *People v. Palacios* (2007) 41 Cal.4th 720, 730 fn. 5.)

The imposed sentence did not apply the one-third limitation to the personal firearm use enhancements. Additionally, the imposition of the firearm enhancements means that one of the robbery counts should have been the principal count, because the term of any of the robbery counts, including the enhancement term, would be greater than the causing serious bodily injury while fleeing a peace officer count. Because of the incorrect selection of the principal term, we are unable to reconstruct an otherwise intended sentence. Thus, the matter must be remanded for resentencing.

DISPOSITION

The judgment is affirmed with respect to the conviction but reversed with respect to the sentence. The matter is remanded to the trial court for resentencing.

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RAMIREZ

P. J.

We concur:

HOLLENHORST

J.

KING

J.